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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,771

12/27/2005

Peter L. Fracnke!

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INDIANAPOLIS OFFICE 27879  
BRINKS HOFER GILSON & LIONE  
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INDIANAPOLIS, IN 46204-2033

EXAMINER

LOPEZ, FRANK D

ART UNIT

PAPER NUMBER

3745

MAIL DATE

DELIVERY MODE

05/31/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,771	<b>Applicant(s)</b> FRAENKEL, PETER L.	
	<b>Examiner</b> F. Daniel Lopez	<b>Art Unit</b> 3745	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 13-22 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 13-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/22/06</u> . | 6) <input type="checkbox"/> Other: ____  |

***Claim Rejections - 35 USC § 112***

Claims 13-22 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13 line 3-4 "a fluid coupling between an output of the first pump and an input of the second pump" is confusing, since the second pump appears to be a motor. Claim 18 line 6-7 has similar limitations, and is similarly confusing. Suggest that all instances of "second pump" be changed to --second motor--.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hopfe (see discussion below).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 13-22 are rejected under 35 U.S.C. § 103 as being unpatentable over Cros in view of WO00/50768 and Hopple. Cros discloses a marine turbine installation comprising first and second turbines having respective rotors (1a, 1b) having respective output shafts (2a, 2b) and positionable in a body of water; wherein a hydrostatic transmission includes at least a plurality of first pumps (17, 19) coupled to each output shaft and have outputs fluidly coupled to an inlet of a second motor (e.g. 6a); wherein the second motor is coupled to a drive shaft (e.g. 7a) of a generator (e.g. 8a); wherein an outlet of the second motor is coupled to the inlet of the first pumps; but does not disclose that the rotors are coupled to a support column fixed to a substrate lying below the body of water; that a filter is coupled to a header tank for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet of the first pump; that a return plenum is coupled to the outlet of the second motor; or that a pressure plenum and a pressure balancing tank are coupled between the first pumps and the inlet of the second motor.

Hopple teaches, for a marine installation comprising a hydrostatic transmission including a plurality of first pumps (4) having an output fluidly coupled to an inlet of a second motor (9); wherein the second motor is coupled to a drive shaft of a generator (10); wherein an outlet of the second motor is coupled to the inlet of the first pumps; that a filter (column 4 line 23-29) is coupled to a header tank (6) for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet of the first pump, by a first main line; that a return plenum (manifold connecting the first pumps to the first main line) is coupled to the outlet of the second motor; and that a pressure plenum (manifold connecting the first pumps to a second main line) and a pressure balancing tank (8) are coupled between the first pumps and the inlet of the second motor.

Since the hydrostatic transmissions of Cros and Hopple are interchangeable in the marine installation art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to replace the hydrostatic transmission of Cros with a hydrostatic transmission which includes a filter coupled to a header tank for filtering water from the body of water; wherein an outlet of the header tank is coupled to an inlet

Art Unit: 3745

of the first pump; a return plenum is coupled to the outlet of the second motor; and a pressure plenum and a pressure balancing tank are coupled between the first pumps and the inlet of the second motor, as taught by Hople, as a matter of engineering expediency.

WO00/50768 teaches, for a marine turbine installation comprising turbine having a rotor (34) with an output shaft (23) and positionable in the body of water; that the turbine is coupled to a support column (1) fixed to a substrate (3) lying below a body of water (5).

Since Cros doesn't show details of how the turbine is mounted in the water and WO00/50768 does, it would have been obvious at the time the invention was made to one having ordinary skill in the art to coupled the turbine of Cros to a support column fixed to a substrate lying below a body of water, as taught by WO00/50768, as a matter of engineering expediency.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:00 AM -4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
May 22, 2007